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PROMOTION AND MAINTENANCE OF THE RULE OF LAW: ACTION AGAINST CORRUPTION AND BRIBERY

Report of the Secretary-General

Summary

The present report has been prepared pursuant to General Assembly resolution 52/87. It contains an analysis of the information provided by Member States on action taken against corruption and bribery and presents an overview of the activities against corruption and bribery undertaken by the Centre for International Crime Prevention and by intergovernmental and non-governmental organizations. It also contains specific recommendations for consideration by the Commission regarding further work in the area of action against corruption.

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INTRODUCTION

1. The General Assembly, in its resolution 52/87 of 12 December 1997, on international cooperation against corruption and bribery in international commercial transactions, agreed that all States should take all possible measures to further the implementation of the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and of the International Code of Conduct for Public Officials. The Assembly requested the Secretary-General to invite Member States to provide a report on steps taken to implement the provisions of the Declaration for compilation by the Secretary-General and consideration by the Commission on Crime Prevention and Criminal Justice, with a view to examining further steps to be taken for the full implementation of the Declaration.

2. The Assembly also requested the Commission to give attention to the question of the bribery of public office holders of States in international commercial transactions and to include in its agenda for a future session a review of action by States to implement the Declaration.

3. Pursuant to the above request, the present report contains an analysis of the information provided by Member States on action taken against corruption and bribery and the relevant activities undertaken by the Centre for International Crime Prevention and other intergovernmental and non-governmental organizations.* It also contains specific recommendations for consideration by the Commission regarding further work in the area of action against corruption.

4. At the time of preparation of the report, replies to the request for information had been provided by the following Member States: Belarus, Burundi, Ecuador, Fiji, Finland, Japan, Iraq, Iran (Islamic Republic of),

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*Reference is also made to the report of the Secretary-General on technical cooperation (E/CN.15/1998/9), the report of the African Regional Ministerial Workshop on Organized Transnational Crime and Corruption, held at Dakar from 21 to 23 July 1997 (E/CN.15/1998/6/Add.1), and the report of the Asia Regional Ministerial Meeting on Transnational Crime, held at Manila from 23 to 25 March 1998 (E/CN.15/1998/6/Add.2).

Mali, Mexico, Morocco, Panama, Poland, Russian Federation, Qatar, Singapore, Slovakia, Spain, Sweden, Turkey, Uzbekistan and Venezuela.

5. Relevant information was also provided by the following Secretariat entities and international organizations, both intergovernmental and non-governmental: United Nations Development Programme; Economic Commission for Europe; Commonwealth Secretariat; Council of Europe; European Union; International Monetary Fund; Organization of American States, Organisation for Economic Co-operation and Development (OECD) and Transparency International.

I. ACTION BY MEMBER STATES AGAINST CORRUPTION AND BRIBERY

6. Information provided by Member States included copies or summaries of national legislation, for example, articles of penal codes, special laws or decrees on corruption and organized crime, commercial laws, procurement laws or administrative provisions. Work is envisaged to establish a database on relevant information received from all sources.

7. Presented below is a brief analysis of the responses received to date from Member States, categorized under several substantive topics.

8. *Making it a criminal offence to bribe or corrupt foreign public officials*. None of the States that replied indicated the existence of specific criminal law provisions for the prosecution of corruption and bribery in international commercial transactions. However, the relevant legislation of some States (Belarus, Iraq, Mexico, Spain, Sweden and Turkey) was broad enough to provide a basis for the prosecution of such offences. According to the Criminal Code of Slovakia, bribery in international business transactions can be prosecuted if this act was committed within the national territory. Articles 11 and 12 of the Criminal Code of the Russian Federation provide, in principle, for the application of national criminal law in determining the liability of a foreign citizen for an act of bribery in connection with international commercial transactions involving a Russian party. Venezuela affirmed that although its legal system does not currently recognize the offence of transnational bribery, the country has committed itself to considering the establishment of such conduct as an offence since the promulgation, on 22 May 1997, of the Law Approving the Inter-American Convention against Corruption. It was also stressed that the fact that the offence has not specifically been established must not be considered as an obstacle to rendering due assistance and cooperation in this respect within the limits of the national legal system. According to the Venezuelan Organic Law for the Protection of Property, any person who attempts to corrupt a Venezuelan public official and the conspiracy of an official with an interested party or an intermediary for the purpose of bringing about a particular result can be punished, the penalty being greater in the latter case if the purpose of the offence was to obtain money, gifts or unlawful profits.

9. *Review of the adequacy of national laws*. Some States stressed that the approval of the Declaration (Sweden) as well as the signature in December 1997 of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Finland and Sweden) would require amendments to their national legislation, which should be introduced, as currently foreseen, in the course of 1998. Poland informed the Secretariat that currently the parliamentary committees were working on a new act on restricting business activity by persons performing public functions as well as on the amendment to the act on public procurement and contracts. The draft of the new act provides for the invalidity of a public procurement order or contract if in the proceedings leading up to its conclusion there had been a breach of law (which may also mean the conclusion of a contract as a result of a bribery). Slovakia was currently reviewing its Penal Code, which was to enter into force on 1 January 1999. The amended Code would contain several provisions to punish bribery and corruption offences. In September 1996, the Accountant General, the Chief Prosecutor for the

Administration and the Attorney-General of Panama appointed an inter-institutional commission for drawing up an anti-corruption programme and for examining existing legislative and administrative control systems to identify their weaknesses so as to implement appropriate remedial measures.

10. *International instruments against corruption and bribery in international commercial transactions*. On 17 December 1997, 33 States signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. On 2 June 1997, Mexico ratified the Inter-American Convention against Corruption; pursuant to article 133 of the Constitution of Mexico, that legal instrument became part of the supreme law of the country. On 22 May 1997, the President of Venezuela promulgated the Law Approving the Inter-American Convention against Corruption. That Convention was adopted within the framework of the Organization of American States (OAS).

11. States members of the European Union have participated in the negotiation of a convention that would require the criminalization of the bribery of European Union officials and of public officials of its member States.

12. *Tax deductibility of illicit payments*. The policy of States on the issue of tax deductibility of illicit payments made to foreign public officials varies. Finland noted that in its national law there are no special provisions on the deductibility of bribes. However, on the basis of case law and general principles, bribes have not been considered deductible expenses for income tax purposes. This also concerns international questions, such as the bribery of foreign public officials. Finally, it was noted that in taxation practice such cases had been rare, and that in the few cases that did occur, tax deductibility had been denied. In Morocco, Slovakia and Spain, according to national legislation, tax deductibility was denied in the case of payments for bribes. According to Polish legislation, deductibility was denied because of the illicit nature of the bribe for both the payer and the recipient.

13. *Accounting standards and practices*. Iraq, Iran (Islamic Republic of) and Spain provided detailed information on existing national measures to ensure transparency and fairness in accounting standards and practices.

14. *Bank secrecy provisions*. The Russian Federation, Slovakia and Spain provided specific information on bank secrecy. In the Russian Federation, under article 26 of the Federal Act on banks and banking activity, bank secrecy provisions do not impede the process of obtaining information in the course of criminal investigations or other judicial proceedings. According to Slovak legislation, banks are obliged to report to the police any transaction when acts or data related to it appear suspicious on the basis of the knowledge available to the banks. In Spain, bank secrecy is not an obstacle to judicial investigations into crimes involving corruption, bribery or illicit practices, since bank secrecy is not a fundamental constitutional right, nor is it covered by professional secrecy provisions of other laws (that is, the provisions envisaging privileged communications with lawyers, prosecutors, clergy etc.).

15. *Mutual assistance*. Belarus, Burundi, Finland, Russian Federation, Singapore, Slovakia and Uzbekistan informed the Secretariat that they have, or are in the process of developing, a set of instruments to cooperate with other States in the detention and prosecution of corruption cases, including bilateral and multilateral treaties, information exchange and cooperation between judicial authorities.

16. A Bill on Mutual Assistance on Criminal Matters was being prepared by the office of the Attorney-General of Fiji. That Bill would provide the framework for mutual assistance in criminal matters with other States of the region.

II. INTERNATIONAL INITIATIVES

A. United Nations

1. Centre for International Crime Prevention

17. The prevention and control of corruption and bribery was one of the central themes examined by the African Regional Ministerial Workshop on Organized Crime and Corruption, held at Dakar, from 21 to 23 July 1997 and organized by the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention of the Secretariat in cooperation with the United Nations International Drug Control Programme (UNDCP) and with the support of the Agency for Cultural and Technical Cooperation. The report of the Workshop is before the Commission (E/CN.15/1998/6/Add.1).

18. The Workshop approved the Dakar Declaration on the Prevention and Control of Organized Transnational Crime and Corruption. In the Declaration, the Ministers reiterated their strong and sustained commitment to combat the phenomenon in all its manifestations and to promote a culture of accountability, transparency, competence and integrity in public life. For that purpose, participating States expressed their intention to develop programmes composed of interrelated and carefully coordinated measures, including administrative, civil, procedural and criminal legislation, as well as various regulatory provisions and administrative action designed to prevent and control corruption and bribery, as a matter of high priority. The elaboration of an international convention against corruption and bribery was recommended as the most effective response to the problem. In order to promote efforts in that direction, participating States undertook to begin working together for the elaboration of an African convention against corruption and bribery.

19. The prevention and control of corruption and bribery, including the strengthening of regional and subregional cooperation in that area, was also one of the main themes of the Asia Regional Ministerial Meeting on Transnational Crime, held at Manila from 23 to 25 March 1998. The report of the Meeting is before the Commission (E/CN.15/1998/6/Add.2).

20. The Centre undertook numerous technical assistance activities against corruption and bribery (that is, needs assessment missions, organization of training seminars and elaboration of projects), which are described in the report of the Secretary-General on technical cooperation (E/CN.15/1998/9). The Centre has also worked on the elaboration of a model law against corruption and on the revision of the manual on practical measures against corruption, first published in 1993.[1]

21. The model law, elaborated in cooperation with UNDCP, was designed as a tool for the provision of practical assistance to requesting Member States. The model law contains provisions for the prevention, detection and punishment of corruption, as well as for international mutual legal assistance in matters of corruption. The model law also includes a chapter setting out the procedures and potential enabling provisions for the establishment of independent anti-corruption bodies. Work on the model law continues to incorporate the experience gained in the execution of technical assistance projects and the use of earlier versions of the draft in several States. The application of the model is a dynamic process and should incorporate new developments and experiences.

22. In its resolution 1995/14 on action against corruption, the Economic and Social Council requested the Secretary-General to review and expand the manual on practical measures against corruption. Pursuant to that request, the Centre is currently working on the revision of the manual. The revised version, scheduled to be ready by the end of 1998, will include a typology and its causes, policies and methods that appear effective against corruption. The manual will also contain an extensive series of case studies, in order to serve as a

training tool. Further, the new manual will include the text of the International Code of Conduct for Public Officials, the United Nations Declaration against Corruption and Bribery in International Commercial Transactions and other relevant instruments, such as the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Inter-American Convention against Corruption.

2. United Nations Development Programme

23. Within the framework of the Management Development and Governance Division, the United Nations Development Programme has undertaken a series of activities aimed at improving national and regional capacity to prevent and control the phenomenon of corruption. One of the most significant initiatives has been the creation of the Programme for Accountability and Transparency (PACT) under the public sector management and accountability subprogramme of the Division.

24. PACT is a global initiative that supports the establishment and improvement of financial accountability and management systems in selected recipient countries through technical assistance. Interventions take place through global initiatives, in regional programmes and at the country level. Through its three-pronged approach, PACT: (a) synthesizes, analyses and develops new strategies and approaches at its Global Secretariat; (b) tests innovative tools in financial management in selected countries; and (c) builds alliances and funds global networks in accountability.

25. PACT is specifically involved in the areas of financial planning, budgeting, cost control, accounting, reporting and auditing in the public sector. The programme also includes support in the area of improvement of integrity in governance, debt management and coordination of aid. The goal of the programme is to improve integrity at all levels of government, an objective which significantly contributes to the creation of an enabling environment for sustainable development.

26. PACT works strategically with other stakeholders in accountability, such as the World Bank, the International Monetary Fund (IMF), bilateral donors, the private sector, academia and other international organizations.

27. After building the foundations of the programme in 1996, PACT initiated three major projects. Those projects cover capacity development and training in records management, international accounting and regional and national audit institutions. Plans have been set in motion to organize collaborative workshops in the area of integrity improvement with the OECD Development Centre; to draw up a regional strategy in financial accountability for States in central and eastern Europe and States members of the Commonwealth of Independent States; and to hold a global meeting for key stakeholders in accountability and transparency. In addition, PACT prepared a paper entitled "Corruption and good governance", a desk review on strategies to prevent and combat corruption.

3. Economic Commission for Europe

28. The Economic Commission for Europe (ECE) has established a Centre for the Facilitation of Procedures and Practices for Administration, Commerce and Transport dedicated to improving the ability of business, trade and administrative organizations, from developed, developing and transitional economies, to effectively exchange products and relevant services. Its principal focus is to facilitate international transactions, through the simplification and harmonization of procedures and information flows, thus contributing to the growth of global commerce.

29. In view of the fact that the competitiveness of products coming from economies with corrupt or inefficient procedures can be threatened and that the associated cost and the lack of efficiency function as barriers to trade, ECE has developed a series of innovative trade facilitation techniques and recommendations. In order for trade operators to be efficient, procedural barriers must be removed from the trading process and the information requirements standardized. ECE has issued 26 recommendations to simplify and harmonize trade procedures.

30. In that connection, ECE has developed the Rules for Electronic Data Interchange for Administration, Commerce and Transport as a means of rationalizing procedures and using electronic data interchange to avoid fraud and corruption.

31. ECE, in its capacity as administrator of the Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention of 14 November 1975), has voiced its concern about the ever-increasing fraudulent activities undertaken by organized crime in the framework of the TIR customs transit system. Such customs fraud has led to considerable financial losses to the State budgets of the participating countries as well as to thousands of payment claims against the international insurers backing up the system.

32. In close cooperation with the transport industry and national customs authorities, a number of immediate control measures have been introduced to curb such illegal activities and a major revision of the TIR Convention has been undertaken, the first phase of which was concluded in June 1997. It appears that, as a first result of those measures, the number of fraudulent activities under the TIR system had been reduced considerably, and it was expected that with the coming into force of the revised TIR Convention by early 1999, further progress would be made to safeguard the TIR system.

B. Intergovernmental organizations

33. An analysis of the information provided by relevant intergovernmental and non-governmental organizations shows that there are some differences in scope, concrete measures or priorities. While the European Union h focused on the problem of corruption of its own officials and public officials of its member States, OECD has devoted a large part of its activities to the bribery of foreign officials in commercial transactions, which culminated in the signature of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in December 1997. The Council of Europe is involved in the possible drafting of a criminal law convention on corruption in general and of an international instrument on civil remedies to compensate for damage resulting from acts of corruption. On the other hand, institutions such as the World Bank, IMF and OECD are funding projects aimed at institution-building and reform.

1. Commonwealth Secretariat

34. The most relevant undertaking of the Commonwealth on the issue of corruption and bribery can be found in the Harare Declaration of 1991. By approving the Declaration, member States pledged that the Commonwealth and national Governments would work with renewed vigour, concentrating especially on the following areas: the protection and promotion of the fundamental political values of the Commonwealth; and democracy, democratic processes and institutions, the rule of law and the independence of the judiciary and just and honest government.

35. In April 1996, the Commonwealth Law Ministers met at Kuala Lumpur where they addressed the issue of corruption and issued a special statement on the prevention of corruption. The Ministers, *inter alia*, mandated the Commonwealth Secretariat to set up an Advisory Working Group charged with the identification of strategies to promote an anti-corruption culture and the development of model legal strategies, including an appropriate legal framework that takes into account the increasing role of the private sector in the system of

government. The meeting of Commonwealth Finance Ministers held in September 1997 addressed the issue of corruption and called upon the Secretary-General of the Commonwealth to convene an expert group to further examine the role of good governance in economic development and ways of effectively addressing corruption. The meeting of Commonwealth Heads of Government, held at Edinburgh in October 1997, considered the topic of the political process, governance and managing economic change, and emphasized the importance of good governance, including increased openness in economic decision-making and elimination of corruption through greater transparency, accountability and the application of the rule of law in economic, financial and other spheres of activity.

2. Council of Europe

36. As a result of the Conference of the European Ministers of Justice held in Malta in 1994, a Multidisciplinary Group on Corruption has been set up with a view to combating corruption from the criminal, administrative and civil law perspectives, on the basis of a programme of action against corruption, formally adopted by the Committee of Ministers in 1996. In particular, the Committee of Ministers requested the Multidisciplinary Group to draft, as a matter of priority: a framework international instrument containing the guidelines of the Council of Europe in combating corruption; a criminal law convention; a code of conduct for public officials; and a civil law instrument providing for compensation for damage resulting from acts of corruption.

37. The draft Criminal Law Convention on Corruption is currently in its final stage of negotiation and is likely to be opened for signature during 1998. It aims at aligning national legislation concerning certain corruption offences and at improving international cooperation in relation to the offences considered. The current draft of the Convention includes the following conduct which the Parties will have to criminalize in their legislation: active and passive corruption of national public officials; active and passive corruption of foreign public officials; active and passive corruption in the business sector; trading in influence involving national and foreign public officials; corruption of international officials; corruption in money-laundering; and corruption in auditing.

38. The purpose of the Model Code of Conduct for Public Officials, which is currently being negotiated within the Working Group on Administrative Law of the Multidisciplinary Group is threefold: to define the ethical climate that should prevail in the public service, to spell out the standards of ethical conduct expected of public officials and to inform members of the public what to expect of public officials in conduct and attitude.

39. A feasibility study on the drawing up of a convention on civil remedies for compensation for damages resulting from acts of corruption was adopted by the Committee of Ministers of the Council of Europe in February 1997. The study gives as complete a picture as possible of aspects related to civil law and corruption and shows that it is possible to devise a number of scenarios where use of civil law remedies might be effective against given forms of corruption. On the basis of the study, the Working Group on Civil Law of the Multidisciplinary Committee is currently negotiating an international instrument on civil remedies to compensate for damage resulting from acts of corruption. The text deals with substantive and procedural provisions including, *inter alia*, questions relating to compensation for damage, evidence, liability, non-pecuniary remedies, validity and effect of contracts, transparency and protection of whistle-blowers, rights for groups to participate in judicial proceedings, access to documents, obtaining evidence abroad, jurisdiction and enforcement of judgements.

40. Following intensive work by the Multidisciplinary Committee in 1997 on the definition of a common framework for national strategies against corruption, the Committee of Ministers adopted, on 6 November 1997, Resolution (97) 24 on 20 guiding principles for the fight against corruption. Those principles concern, *inter alia*,

the need: to take effective measures for the prevention of corruption and, in that connection, to raise public awareness and promote ethical behaviour; to provide appropriate measures for the seizure and confiscation of the proceeds of corruption offences; to limit immunity from investigation, prosecution or adjudication of corruption offences to the degree necessary in a democratic society; to ensure that the organization, functioning and decision-making processes of public administration take into account the need to combat corruption, in particular by ensuring as much transparency as is consistent with the need to achieve effectiveness; to ensure that appropriate auditing procedures apply to the activities of public administration and the public sector; to endorse the role that audit procedures can play in preventing and detecting corruption outside public administration; to encourage the adoption, by elected representatives, of codes of conduct and to promote rules for the financing of political parties and election campaigns that deter corruption; to ensure that the media have freedom to receive and inspect information on corruption matters, subject only to limitations or restrictions that are necessary in a democratic society; to ensure coordinated criminalization of national and international corruption; to ensure that civil law takes into account the need to fight corruption and in particular provides for effective remedies for those whose rights and interests are affected by corruption; and to encourage research on corruption.

3. European Union

41. *European Commission communication on corruption*. In response to a European Parliament resolution on corruption of 15 December 1995, the European Commission issued a communication to the Council of Ministers and the European Parliament on 21 May 1997 on a European Union policy against corruption, advocating a comprehensive strategy for dealing with corruption. The communication covers, and goes beyond, corruption within the Community. It incorporates measures in the area of criminal law, as well as measures to promote transparency and to achieve anti-corruption effects in particular with regard to public procurement, taxation, company accounts, blacklisting, external assistance and cooperation, and anti-corruption programmes.

42. *Action Plan to Combat Organized Crime*. The Heads of States of the European Union, at a summit meeting held in June 1997, adopted an Action Plan to Combat Organized Crime, which recognized that a major driving force behind organized crime is the pursuit of financial gain through economic crime, including corruption, and which sets out the details of measures to be taken to achieve a coherent approach in the fight against crime. The Action Plan recommends the adoption of a global policy against corruption, taking into account the work also carried out in other international forums, in order to enhance transparency in public administration, at the level of both the member States and the European Communities.

43. *Public procurement*. The European Union has adopted a series of rules containing provisions that enable contract authorities to exclude companies or enterprises that engage in misconduct or corrupt or fraudulent practices. The European Community adopted, notably as part of the programme of the single market, various directives designed to enhance transparency, to open up public procurement and to guarantee non-discriminatory treatment to suppliers from the European Union. Although those directives make no specific reference to corruption, some include provisions that could apply to corruption cases.

44. *Community-funded programmes*. The Programme of Assistance for Economic Reconstruction in the Countries of Central and Eastern Europe (PHARE) has provided some limited technical assistance for containing corruption in the public sector in eastern Europe. An example of such cooperation is the joint Council of Europe/European Union OCTOPUS programme on corruption and organized crime in central and eastern Europe. The OCTOPUS I programme (1996-1997) has recently been concluded, and it has yet to be decided whether to continue with an OCTOPUS II programme.

45. *Instruments dealing with corruption adopted by the Council of Ministers.* Two important instruments that deal specifically with the problem of corruption of Community as well as national public officials have been adopted by the Council and form part of the *acquis communitaire*. The first is the First Protocol to the Convention on the Protection of the Financial Interests of the Community, adopted on 27 September 1996, which provides that member States should criminalize active and passive corruption committed by or against Community officials and public officials of its member States that affect the financial interests of the Community. The second instrument, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, was adopted by the Council on 26 May 1997 and provides that all member States should criminalize active and passive corruption committed by or against Community officials and public officials of its member States, irrespective of whether Community financial interests are at stake.

46. *Other international developments involving the European Union.* At the international level, the European Commission has participated in the work of OECD and the Council of Europe for the furtherance of anti-corruption programmes. The Commission supported the adoption of common positions under title VI of the Treaty on European Union favouring criminalization of bribery of foreign officials to be pursued in OECD (as well as in the Council of Europe, where discussions are under way on a more comprehensive draft penal convention). Two European Union joint positions were adopted by the Council, the first on 6 October 1997 and the second on 13 November 1997.

4. International Monetary Fund

47. IMF action against corruption and bribery is mainly linked to its work in the areas of international money-laundering and governance.

48. The main IMF support for anti-money-laundering policies is provided to its member States primarily through technical assistance. In the area of foreign exchange markets, IMF technical assistance has recommended uniform application of the licensing and financial reporting requirements to all forms of foreign exchange dealers and of the standard provisions of the Financial Action Task Force on Money Laundering for anti-money-laundering surveillance, and called for reporting by foreign exchange dealers on the application of codes of conduct in foreign exchange markets. IMF provides technical assistance to help Member States contain tax evasion, and thus the related laundering of the proceeds of evasion. Technical assistance is also provided in framing and drafting banking, foreign exchange and related legislation as well as regulatory provisions. IMF management and staff have also contributed to the international anti-money-laundering effort through various publications and speeches, participation in seminars and meetings and a wide range of contacts with country officials and officials of other interested organizations.

49. With regard to governance, the IMF Executive Board, on 4 August 1997, approved a note that sets out the criteria for IMF involvement in the governance issue. IMF emphasizes that governance is primarily the responsibility of national authorities themselves. However, IMF involvement is called for when the ability of the Government to pursue sound economic and financial policies is affected by weak governance, and there is a significant current or potential impact on macroeconomic performance (for example, misappropriation of public funds and fraud by tax and customs officials). IMF provides technical assistance to support the efforts of States to improve their governance policies. Through such assistance, tax policy and administration, treasury systems, public expenditure policy and management, as well as institutional and policy-making capabilities, are strengthened and modernized, thus enhancing the transparency of government operations.

50. In addition, IMF research on governance has explored issues such as fiscal corruption, public sector wages and corruption and the effects of corruption on growth, capital accumulation and government expenditure.

5. Organization of American States

51. On 29 March 1996, the Specialized Conference of the Organization of American States adopted the Inter-American Convention against Corruption. Under its provisions, the instrument came into effect on 4 March 1997, the thirtieth day following the date of deposit of the second instrument of ratification.

52. At its twenty-sixth regular session, the General Assembly of OAS, by its resolution 1395 (XXVI-O/96), resolved "to instruct the Inter-American Juridical Committee, as a follow-up to its contribution to the adoption of the Inter-American Convention against Corruption, to develop model laws regarding illicit enrichment and transnational bribery, which Member States may draw upon". In its resolution CP/RES.689 (1092/96), the Permanent Council of OAS requested the Inter-American Juridical Committee, at its regular session in February and March 1997, to act, as a priority, on the mandate given in the aforementioned resolution, taking particular account of the Inter-American Convention against Corruption.

6. Organisation for Economic Co-operation and Development

53. In May 1997, the OECD Council adopted the Revised Recommendation on Combating Bribery in International Business Transactions. That Recommendation, which preserves the general undertaking of an earlier 1994 recommendation, elaborates specific commitments with regard to criminalization, taxation, accounting, external audit and public procurement, including contracts funded by development assistance.

54. In October 1997, a Workshop on Corruption and Integrity Improvement in the Context of Developing Economies was jointly organized in Paris by the UNDP Programme for Accountability and Transparency and the OECD Development Centre. In March 1998, a publication on selected presentations from the Workshop was to be released. The publication is designed to facilitate concrete follow-up action at the global, regional and country levels, and to encourage information-sharing and network-building for closer collaboration and strategic coordination among the key players in the fight against corruption.

55. In November 1997, following six months of negotiations, OECD members and five non-OECD countries adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention was signed by 33 States on 17 December 1997; entry into force is foreseen by the end of 1998. It should permit OECD and other States to move in a coordinated manner to adopt national legislation making it a crime to bribe foreign public officials. The Convention sets a broad, clear definition of bribery; it requires dissuasive penalties; it fixes a strong criterion for enforcement; and it provides for mutual legal assistance.

56. Over the course of 1998, the OECD Working Group on Bribery in International Business Transactions will monitor ratification of the Convention and develop procedures for monitoring performance related to both the Convention and the Revised Recommendation. It will also analyse on a priority basis a number of issues related to criminalization (for example, acts of bribery involving foreign political parties; advantages promised or given to any person in anticipation of that person becoming a foreign public official; bribery of foreign public officials as a predicate offence for money-laundering legislation; and the role of foreign subsidiaries and of offshore centres in bribery transactions) and begin to consider problems of private-sector corruption in international business transactions. Other OECD committees will examine the use of rules on export credits to fight international corruption and on assessing progress in reducing corruption in aid-funded procurement.

C. Non-governmental organizations

57. Transparency International (TI) is a non-profit, non-governmental organization, founded at Berlin in 1993, to curb corruption in international business transactions. During 1997, TI continued to provide its inputs and assistance to the work of several intergovernmental organizations, including the United Nations, the World Bank, IMF, OAS and OECD (particularly its Working Group on International Bribery).

58. TI provided its services to the council responsible for organizing the Eighth International Anti-Corruption Conference, held at Lima from 7 to 11 September 1997, and completed the publication *National Integrity Systems: the TI Source Book*, funded by the Ford Foundation. That publication, which brings together a wide variety of experience in building integrity systems that can contain corruption and a wide variety of instruments used to monitor assets, set standards and enforce effective laws, is a continuing project and will be regularly updated.

59. During 1997, the number of national chapters established or being set up in several States in Africa, the Americas, Asia and Europe reached 70. They are coalitions of business, labour, academic, professional and civic groups encouraging Governments to establish and implement effective anti-corruption laws, policies and programmes. Another development during the past year was the constitution of a Council on Governance Research.

III. CONCLUSIONS AND RECOMMENDATIONS FOR CONSIDERATION BY THE COMMISSION

A. Conclusions

60. Corruption is a complex phenomenon. Efforts to combat it require an integrated approach composed of different, but all equally relevant, elements including promotion of good governance and democracy, economic reform, awakening of civil society and strengthened and coordinated international cooperation.

61. In drawing some preliminary and general conclusions from the responses provided by Member States, it is significant to note an increasing awareness by Governments of the need to instil and nurture, through administrative and legislative initiatives, a culture of legality, accountability and transparency. Action taken within the United Nations and other international bodies has prompted legislative action by several States, while several others are contemplating similar initiatives. Further, the issue of corruption and bribery is increasingly considered by the Member States as a top priority at both national and international levels. More concerted international action is likely to become feasible and assume more tangible dimensions if such awareness and commitment are consolidated and further strengthened.

62. Another important consideration is that the fight against corruption and bribery can be effective only when there is a concrete and continuous synergy between all actors involved. Efforts at the international level can provide the impulse for action at the national level. International consensus is a powerful incentive that helps to create and sustain political will and serves as the engine for extending support, both political and financial, to Governments wishing to take action. At the national level, the responsibility falls equally to Governments, legislators and political parties and to civil society. Governments, however, should provide the leadership. Efforts should be directed at strengthening and sustaining their resolve and commitment. Corruption is a phenomenon that cannot be addressed with a single set of measures. Effective action requires vigilance over time, continuous monitoring of the situation, adjustments to the various measures put in place to deal with the problem, and, above all, uninterrupted commitment to accountability, transparency, competence and integrity.

63. In light of the growing needs of Member States, which are reflected in the considerable increase in the requests for technical assistance, the Centre for International Crime Prevention—subject to the availability of extrabudgetary funds—should expand and improve its operational capacity in the area of corruption. In addition to the services currently provided to Member States, including needs assessment missions, project formulation, advisory services for drafting legislation, organization of training seminars and preparation of model laws, the Centre could develop a series of new initiatives such as the following:

(a) Collection and analysis of national anti-corruption strategies in order to elaborate compilations of best practices that could be useful for the preparation of training material;

(b) Elaboration of comparative studies, which would assist States in designing, formulating and implementing joint strategies and collaborative arrangements to prevent and control corruption;

(c) Development of model courses for universities and schools of business and public administration;

(d) Organization of public awareness campaigns;

(e) Assistance in the elaboration of codes of conduct for private enterprises.

64. Despite the continuing divergence of views on the phenomenon of corruption and the existence of different approaches to its prevention and control, international efforts to fight the problem have considerably grown in recent years and a consensus on common measures has emerged. As already stressed in the previous report of the Secretary-General on action against corruption (E/CN.15/1997/3), it is now widely recognized and accepted as a common goal that steps should be taken to outlaw, prevent and effectively punish practices that undermine the functioning of the economic system, competitive conditions in international markets and the principles of equality, transparency and accountability. States are invited to criminalize certain acts according to their own legal systems and traditions; to disallow the political offence exception to extradition for corrupt officials; to limit bank secrecy, to take the profits away from corrupt officials through confiscation of illicit proceeds; and to encourage the participation of citizens and freedom of the press. In addition, there is a general recognition of the importance of the provision of technical cooperation, particularly in institution-building and reform.

65. The growing attention given by other international organizations to the issue of corruption is extremely important. However, it is equally important that the activities undertaken build and rely on the achievements and the significant work carried out in this area by the United Nations, especially the Commission on Crime Prevention and Criminal Justice. It is essential that those organizations, particularly funding institutions, should be actively encouraged to build a partnership with the United Nations. Such a course of action will ensure more efficient use of resources, while collective action is bound to have a more significant impact. A stronger partnership would also be instrumental in assisting developing countries and States with economies in transition to achieve a sustainable culture of legality and transparency.

66. Recent international developments, such as the signature of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the work done by the Council of Europe, indicate that the time is ripe for exploring the possibility of elaborating new global instruments to fight corruption.

B. Recommendations

67. The Commission on Crime Prevention and Criminal Justice may wish to:

(a) Make recommendations for international action that would sustain and strengthen the existing positive international momentum and would continue forging the required international consensus on action against corruption. In that connection, it is recalled that the General Assembly, in its resolution 51/191, requested the Economic and Social Council and its subsidiary bodies, in particular the Commission, to examine ways, including through legally binding international instruments, to further the implementation of the Declaration, so as to promote the criminalization of corruption and bribery in international commercial transactions;

(b) Identify ways of enabling the Centre for International Crime Prevention to act proactively by studying developments and regularly consulting with Governments, in order to be able to provide early warning and for the purpose of countering the effects of corruption;

(c) Identify ways of mobilizing extrabudgetary resources in order to continue expanding and improving the operational capacity of the Centre for International Crime Prevention for the provision of practical assistance to requesting States in the area of corruption and bribery;

(d) Identify means of improving coordination and fostering synergies, such as through coordination meetings, in the work of concerned United Nations entities and intergovernmental organizations, in particular UNDP, the World Bank, IMF, the Council of Europe, the European Union, OAS, OECD and the Association of South-East Asian Nations;

(e) Study the feasibility and the modalities of fostering and strengthening cooperation between the Centre and the private sector in developing anti-corruption strategies and measures, in view of the importance of the involvement of the business community in anti-corruption efforts and in technical cooperation.

Notes

[1] *International Review of Criminal Policy*, Nos. 41 and 42 (United Nations publication, Sales No. E.93.IV.4).